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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 560

EARLE W. HILTON, PETITIONER,

vs.

JOHN L. SULLIVAN, SECRETARY OF THE NAVY, FRANCES PERKINS, HARRY B. MITCHELL AND ARTHUR FLEMMING, MEMBERS OF THE CIVIL SERVICE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JANUARY 30, 1948.

CERTIORARI GRANTED MARCH 8, 1948.

APPENDIX

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9554.

EARLE W. HILTON, *Appellant*,

v.

JAMES FORRESTAL, Secretary of the Navy, and FRANCES PERKINS, HARRY B. MITCHELL, ARTHUR FLEMMING, Members of the Civil Service Commission, *Appellees*.

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX.

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1 Filed Nov 19 1946

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action, File Number 37784

EARLE W. HILTON, No. 14 Third St., Naval Base, Charleston, South Carolina, *Plaintiff*,

v.

JAMES FORRESTAL, Secretary of the Navy, and FRANCES PERKINS, LUCILLE FOSTER MCMILLIN, ARTHUR FLEMMING, Members of the Civil Service Commission, *Defendants*.

Complaint

Action for declaratory judgment, mandamus and other relief.

1. The action arises under the Civil Service Act, as amended, 22 Stat. 403, 5 U. S. C. 632, as amended, the Veterans' Preference Act of 1944, 58 Stat. 387, 5 U. S. C. 851, and the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S., Appendix 301, as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

2. Plaintiff is a citizen of the State of South Carolina. Defendant, James V. Forrestal, is the duly appointed Secretary of the Navy and executive head of the Navy Department. Frances Perkins, Lucille Foster McMillin, and Arthur S. Flemming, defendants, are the duly appointed members of the Civil Service Commission, an independent agency in the executive branch of the Federal Government.

3. The action is brought under the Federal Declaratory Judgment Act, 28 U. S. C. 400, as amended, to obtain a judgment in an actual controversy declaring the rights and legal relationships of the parties and for further relief.

4. Plaintiff entered the Federal Government Service on May 31, 1933, as a helper [illegible]ermaker, in the Navy Yard at Charleston, South Carolina. Plaintiff was discharged without prejudice on August 15, 1933. Plaintiff was reappointed with a probationary appointment April 5, 1934, as a. shipfitter minimum, and worked continuously in said shop for more than twelve years, as an employee with permanent status in the classified Civil Service, during which period he received promotions through various skilled classifications of labor to the classification of Leadingman Shipfitter at a base wage of $12.08 per day. Plaintiff was demoted to Shipfitter Maximum at a base wage of $10.08 per day on January 7, 1946, in a reduction in force under procedure hereinafter set forth.

5. By virtue of his permanent status in the Federal Civil Service, plaintiff acquired valuable legal rights under the Civil Service Act, as amended 22 Stat. 503, 5 U. S. C. 632, as amended, including the right to remain at work in his position unless removed in accordance with law.

6. On September 25, 1945, the Civil Service Commission promulgated regulations governing reductions in force among Federal personnel [5 C. F. R. (1945 Supp.) Sections 12.301 to 12.314 inclusive], hereinafter called the regulations, purporting to conform to the statutory requirements of Section 12, Veterans' Preference Act of 1944, 58 Stat. 387, 5 U. S. C. 861.

7. Thereafter, pursuant to the regulations, defendant, Secretary of the Navy, by his duly authorized officers and agents, established retention registers fixing the order of retention preference of employees in the Navy Yard at Charleston, South Carolina, in the event of a reduction in force, and placed plaintiff, a non-veteran, in the A-2 retention sub-group on the retention register for the Shipfitters Shop in the said Navy Yard, while competing employees, with substantially less service than plaintiff but with veteran's preference, were placed in the higher A-1 Plus and A-1 retention sub-groups on the said retention register.

8. On November 8, 1946, after due notice under the regulations, plaintiff, with twelve years' service and an excellent efficiency rating was placed in furlough status for a period up to one year by defendant, Secretary of the Navy, in a reduction in force at the Navy Yard effected pursuant to the regulations, although competing employees in the A-1 Plus and A-1 sub-groups, some with less than three years' service, were retained in active service.

9. On information and belief more than 500,000 employees will be separated from their positions in the Federal civil service between now and July 1, 1947, under the Federal Government's publicly announced program for such reductions in Federal personnel and plaintiff's absolute separation from the service will be effected during this period under the regulations, which remain in full force and effect.

10. The establishment under the regulations of the A-1 Plus retention sub-group giving World War II veterans an absolute retention preference during a one year period after return to duty over all competing employees in the A group, with no regard whatsoever to relative length of service is unreasonable, arbitrary and capricious, without statutory warrant and contrary to the express provisions of Section 8(c) Selective Training and Service Act of 1940, 54 Stat. 890, 50 U. S. C. Appendix 308 and Sec. 12 Veterans' Preference Act of 1944, 58 Stat. 390, 5 U. S. C. 861.

11. The establisment of the A-1 retention sub-group, giving veterans a higher retention preference over competing non-veterans in the A group, with no regard whatsoever to relative length of service is unreasonable, arbitrary and capricious, without statutory warrant, and contrary to the express provisions of Sec. 12 Veterans' Preference Act of 1944, 58 Stat. 390, 5 U. S. C. 861.

12. The application of the unlawful regulations by defendant, Secretary of the Navy, to plaintiff, as hereinbefore alleged, has operated to deprive plaintiff of his office as Leadingman Shipfitter in the Shipfitters Shop in said Navy Yard contrary to law.

13. Plaintiff has at all times since his demotion and furlough been ready, able and willing to perform the duties of his office as Leadingman Shipfitter in the Shipfitters Shop but has been and is being unlawfully deprived of his office as hereinbefore alleged.

14. Plaintiff has suffered and will continue to suffer, unless relief is afforded by this Court, irreparable damage in that he has been, is being, and will be unlawfully and unjustly deprived of his office and the rights, privileges, and emoluments pertaining to it.

15. Plaintiff is without adequate remedy at law.

WHEREFORE, plaintiff demands that the Court adjudge and order:

4 1. That the reduction in force regulations of the Civil Service Commission, insofar as they establish, without regard to relative length of service, the higher A-1 Plus and A-1 retention preference in favor of veterans in competition with non-veterans, are void and of no effect as contrary to law and unlawful in their application to plaintiff.

2. That a writ issue in the nature of a writ of mandamus to defendant, Secretary of the Navy, commanding him to restore plaintiff forthwith to his office as Leadingman Shipfitter in the Shipfitters Shop at the Navy Yard, Charleston, South Carolina, together with all the rights, privileges, and emoluments of said office.

3. That a writ issue in the nature of a writ of mandamus to defendants, Frances Perkins, Lucille Foster McMillin, and Arthur S. Flemming, members of the Civil Service Commission, requiring them to rescind the regulations and reconsider and promulgate new regulations in conformity with the requirements of Section 12 of the Veterans' Preference Act of 1944, 58 Stat. 387, 5 U. S. C. 851, as declared by the court.

4. That plaintiff have such other and further relief as is just.

MORTIMER KOLLENDER,
1129 Vermont Avenue, N. W.,
Washington, D. C.,
WALTER B. WILBUR,
308 Peoples Building,
Charleston 3, South Carolina,
J. HOWARD YATES,
308 Peoples Building,
Charleston, S. C.,
Attorneys for Plaintiff.

5 Filed Jan 17 1947

Answer

For answer to the complaint herein the defendants state:

1. Defendants admit the allegations contained in Paragraph 1 of the complaint.

2. Defendants admit the allegations contained in Paragraph 2 of the complaint.

3. Defendants admit the allegations contained in Paragraph 3 of the complaint.

4. Defendants admit all the allegations contained in Paragraph 4 of the complaint except the allegation that plaintiff's demotion as of January 7, 1946 to Shipfitter Maximum at a base wage of $10.08 per day was due to a reduction in force, and aver that on January 7, 1946 plaintiff was reassigned as a Shipfitter at a base wage of $10.08 per day due to an adjustment of the supervisory force.

5. Defendants admit the allegations contained in Paragraph 5 of the complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the complaint and defendants aver that such regulations governing reductions in force did in fact conform to the statutory requirements of Section 12 of the Veterans' Preference Act of 1944.

6

7. Defendants admit the allegations contained in Paragraph 7 of the complaint.

8. Defendants admit the allegations contained in Paragraph 8 of the complaint.

9. With regard to the allegations contained in Paragraph 9 of the complaint defendants admit that there will be some reduction in Federal Civil Service personnel and substantially greater reduction in Federal War Service personnel during the period to July 1, 1947. The allegation that due to such reductions, plaintiff will be absolutely separated from the Federal Civil Service by July 1, 1947 is a conclusion and requires no denial; however, insofar as a denial may be required, said allegation is denied.

10. Defendants deny the allegations contained in Paragraph 10 of the complaint.

11. Defendants deny the allegations contained in Paragraph 11 of the complaint.

12. The allegations contained in Paragraph 12 of the complaint are legal conclusions and require no answer; however, insofar as an answer may be required, the allegations are denied.

13. The allegations contained in Paragraph 13 of the complaint are legal conclusions and require no answer; however, insofar as an answer may be required, the allegations are denied.

14 The allegations contained in Paragraph 14 of the complaint are legal conclusions and require no answer; however, insofar as an answer may be required, the allegations are denied.

7 15. Defendants admit the allegation contained in Paragraph 15 of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

16. The placement of plaintiff in a furlough status, due to curtailment of work and the attendant necessity for reduction in force, was effected in complete conformity with all applicable and controlling statutes, rules and regulations and not in violation of any provision of the Civil Service

Act, Veterans' Preference Act of 1944, or the Selective Training and Service Act.

FOR A SECOND AFFIRMATIVE DEFENSE

17. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the defendants pray that the complaint be dismissed with costs.

JOHN F. SONNETT,
Assistant Attorney General.
GEORGE MORRIS FAY,
United States Attorney.

8 Filed Jan 28 1947

Order Dropping Lucille Foster McMillin, as United States Civil Service Commissioner, as a Party Defendant and Adding Harry B. Mitchell, as United States Civil Service Commissioner, as Party Defendant in Her Place and Stead and Amending the Pleadings Accordingly

Upon motion of plaintiff and the written consent of defendants by their attorneys and it appearing to the court that defendant Lucille Foster McMillin having ceased to serve as a United States Civil Service Commissioner prior to the filing of the complaint herein is not a necessary party defendant and that Harry B. Mitchell is and has been at all times material herein a duly appointed United States Civil Service Commissioner and proper party defendant within the jurisdiction of this court,

IT IS ORDERED THAT:

(1) Lucille Foster McMillin be dropped as a party defendant.

(2) Harry B. Mitchell, as United States Civil Service Commissioner, be and he is hereby added as a party defendant.

IT IS FURTHER ORDERED THAT:

The pleadings be and they hereby are deemed amended by substituting the said Harry B. Mitchell for the said Lucille Foster McMillin in the caption and wherever the latter is named in the pleadings.

T. ALAN GOLDSBOROUGH,
Justice.

JOHN F. SONNETT,
Asst. Attorney General.

GEORGE MORRIS FAY,
United States Attorney.
Attorneys for Defendants.
By D.P.M.

9 Filed Mar 1 1947

Plaintiff's Motion for Summary Judgment

Now comes plaintiff, Earle W. Hilton, by his attorneys, and on the annexed affidavit, and the record herein including the complaint and answer, moves the Court for summary judgment pursuant to Rule 56a of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law.

MORTIMER KOLLENDER,
WALTER B. WILBUR,
J. HOWARD YATES (by L. R. W.)
Attorneys for Plaintiff.

10 Filed Mar 1 1947

Affidavit

STATE OF SOUTH CAROLINA,
County of Charleston, ss:

Earle W. Hilton being duly sworn deposes and says:

I am the plaintiff in the above described cause and for more than twelve years until November 8, 1946, I had served on active duty as a skilled craftsman with permanent Civil Service status in the Shipfitters Shop at the Charleston Naval Shipyard, Charleston, South Carolina. I was first employed at the Shipyard on May 31, 1933, as a Helper Boilermaker and was discharged without prejudice from that position on August 15, 1933. Thereafter, on April 5, 1934, I was given a probationary appointment in the classification of Shipfitter Minimum, which was made absolute after six months' satisfactory service. I worked for three years in the classification of Shipfitter Minimum until I was promoted to the classification of Shipfitter Intermediate. After another three years, I was promoted on April 29, 1940, to the classification of Shipfitter Maximum, the highest rating in the non-supervisory mechanic bracket. During 1941 I completed the required periods of training for instructor mechanic and for supervisor, and on January 5, 1942, I was promoted to Leadingman Shipfitter, a position on the supervisory staff, in which I served throughout the critical years of the war. During the war I was classified 4 E by my local Draft Board on November 14, 1944. I was not called by the draft as I was over age.

On January 7, 1946, I received a notice of demotion, from Leadingman Shipfitter at a wage of $12.08 per day to the classification of Shipfitter Maximum at a wage of $10.08 per day due to a reduction of the supervisory force.

11 My selection for this demotion was made pursuant to reduction in force regulations approved by the Civil Service Commission which gave no effect to my length of service in the competition with veterans for retention, as explained in the Commandant's Order No. 109-45 dated

October 23, 1945. On November 8, 1946, I was furloughed without pay for up to one year from my position as Shipfitter Maximum in a second reduction in force pursuant to the Civil Service Commission regulations complained of herein, which again gave no effect to length of service in the competition with veterans for retention.

In these reductions in force employees with substantially less service and skill than I have, but with veterans' preference, were retained. The number employed at the Charleston Navy Yard rose from approximately 7,000 in 1938 to approximately 27,500 at the peak of employment. Most of the new employees were without the knowledge or experience to perform the difficult and skilled task of building, repairing, and maintaining the Navy war ships in the Charleston Navy Yard during the war period. The essential responsibility for performance of the work rested on the experienced career Civil Service employees. Approximately 85% of the employees now accorded veterans' preference were without experience in ship building and were trained by the experienced career Civil Service Employees. Yet, the preference employees, who are little more than ready to graduate from the apprentice class on the basis of peace-time standards and requirements, have replaced the experienced career Civil Service employees who trained them.

I am 41 years old, married, and the father of one child. I have no independent income other than that received for my work. Since 1934 I have made the federal service my career and on the basis of my experience had reason to anticipate, with satisfactory service and conduct, twenty two years of active employment and enjoyment of the rights incident to my status. I have built a home at the Naval Base on the expectation of remaining at the Shipyard.

As a skilled employee with classified status, I enjoyed many rights and benefits which made my job more attractive to me than private employment. As a family man, my first and foremost benefit was the high degree of job security afforded. As a classified employee, I could only be discharged under the law for "cause" in accordance with

statutory procedure, and even if a decrease in the
12 work at the Yard made a reduction in employees necessary, I could count on a fair chance to keep my job in competition with other employees, including veterans, since my length of service and experience were taken into consideration under the reduction in force procedure followed for the classified field service at the Navy Yard.

In addition to my job security, I enjoyed more liberal standards as to maximum hours of work, earned vacations with pay, retirement and sick leave benefits, based in part on my length of service, than are usually found in private employment. Besides all of these personal advantages, I was employing my highest skills in important public work, which was crucial during the war.

Since November 8, 1946, on which date I was transferred from active duty to furlough status without pay, I have had only odd jobs and have earned a total of about $150.00.

As a direct result of the Commission's reduction in force regulations, which disregarded my length of service to the Government in the competition for retention with preference employees, I have already been deprived, to my irreparable damage, of my livelihood, my job security, all the benefits described herein relating to the job, and my skill acquired over the years in my craft is being daily further impaired through disuse. Under the current policy of Federal personnel reduction, it is a virtual certainty that I will be finally separated from the Federal service with no hope of reinstatement at the expiration of my one-year furlough period on November 8, 1947, unless the court declares invalid the regulations complained of herein.

EARLE W. HILTON.

Sworn and subscribed to before me, this 19th day of February 1947.

EDGAR LLOYD WILLCOX,
Notary Public for South Carolina.

My commission expires at the pleasure of the Governor.

• • • • • • • • • •

13 Filed Mar 14 1947

Stipulation I.

It is hereby stipulated between the parties by their respective counsel that the following annexed documents, marked Exhibits A through H inclusive, are genuine copies of the originals and may be made a part of the record herein together with this stipulation.

1. Notice dated December 21, 1945, to Earle W. Hilton from Commander, U. S. Naval Shipyard, Charleston, South Carolina, on subject 'Demotion of Group IVa Employees. (Non-veteran), marked Exhibit A.

2. Commandant's Order No. 109-45 dated October 23, 1945, on subject 'Adjustment of Supervisory Force, Group IV-A Demotions.' (Superseding reference (a); paragraph 16), marked Exhibit B.

3. Retention Register of Quarterman Shipfitter and Leadingman Shipfitter Classifications at the Charleston Naval Shipyard as of January 7, 1946, marked Exhibit C.

4. Notice of Furlough Because Reduction in Force dated October 7, 1946, to Earle W. Hilton, Shipfitter, from Commander, Charleston Naval Shipyard, marked Exhibit D.

5. Retention Register of Shipfitter Classification at the Charleston Naval Shipyard as of November 8, 1946, marked Exhibit E.

6. Circular letter dated June 27, 1946, from John L. Sullivan, Acting Secretary of the Navy to All Naval and Marine Corps Activities Concerned on subject 'Discussion of Some of the Current and Future Management Problems of the Naval Shore Establishment' together with enclosure, marked Exhibit F.

7. Press Release United States Civil Service Commission No. 60-27/47 dated January 17, 1947, marked Exhibit G.

14 8. Graphic Chart of 'Civilian Employment, Executive Branch of the Federal Government for Year Ended November 30, 1946,' prepared by United States Civil Service Commission, marked Exhibit H.

MORTIMER KOLLENDER,
WALTER B. WILBUR,
Attorneys for Plaintiff.
JOHN F. SONNETT,
JOSEPH M. FRIEDMAN,
Attorneys for Defendants.

15 Filed Mar 14 1947

Exhibit A.

IRD-E-No. 209np

UNITED STATES NAVAL SHIPYARD, CHARLESTON
(P. O.) NAVY YARD, S. C.

Date of Notice 21 December 1945

From: Commander, U. S. Naval Shipyard, Charleston

To: Earl W. Hilton

Subj: Demotion of Group IVa Employees. (Non-Veteran)
Ref: (a) Comdt's Order No. 109-45. dtd. 23 October 1945.

1. The Commander regrets that the reduction in the work Naval Shipyard, requiring an adjustment of both the supervisory and non-supervisory force, makes it necessary to notify you herewith of your rerating from Quarterman Shipfitter to Leadingman Shipfitter effective 7 January 1946.

2. Your services have been satisfactory, and your selection for demotion has been made in accordance with procedures (as summarized in reference (a)) established by the Navy Department and approved by the United States Civil Service Commission. Factors taken into account are the length of time spent in your present or higher supervisory ratings, the nature of your appointment, whether or

not you are entitled to veterans preference, and your efficiency rating, resulting in total retention credit calculated as follows:

Retention Group	*Efficiency Rating*	*Efficiency Credit*	*Allowable Service Credit*	*Total Retention Credit*
A-2	86	—	3.83	3.83

3. Our records do not indicate that you are entitled to veterans' preference. If you believe that you should be entitled to veterans' preference, or if you wish to examine the regulations or to inspect the retention register and records, please consult the Employment Section, Industrial Relations Division, Room 201, Building No. 76 at once. In the event that you should need any advice or information on this subject relative to your rights as an employee of this U. S. Naval Shipyard, you are urged to consult your supervisor or any of my representatives.

4. If you believe that rights under Civil Service regulations have not been recognized in your case, you have the right to appeal this action to Representative, U. S. Civil Service Commission, Room 203, Industrial Relations Building, within ten days after receipt of this notice.

R. N. S. BAKER,
J. S. PATTERSON,
Commander, USNR
Industrial Relations Officer.

CC:
1—Employee
1—Master *Shipfitter*
1—Employee's Adm. Folder
1—T-2

16 Filed Mar 14 1947

Exhibit B.

OFFICE OF THE COMMANDANT
UNITED STATES NAVY YARD
CHARLESTON, S. C.

23 October 1945

ON2/A7-1/LC/LL/P17-2/LL/P-16-1
(C) (R) (P) (N) (T-4-01)

Commandant's Order No. 109-45

SUBJ: Adjustment of Supervisory Force, Group IV-A Demotions. (SUPERSEDING reference (a), paragraph 16)

Refs: (a) Comdt's. Order 81-45 of 1 September 1945.
(b) NCPI 170 Amendment No. 2 of 10 October 1945.

1. Effective immediately, paragraph 16 of reference (a) is superseded and demotions of supervisory mechanical employees (except masters, foremen and other positions whose appointments are made by the Navy Department) and of planners and estimators and progressmen shall be made as follows:

(a) Competitive areas and competitive levels shall correspond to the competitive areas and levels applicable to the trades or occupations in which they are employed, with the exception of progressmen who will be considered as one competitive group.

(b) Retention Register Lists shall be set up by trades showing retention group, sub-groups and retention credits.

(1) Retention credits within sub-groups shall be computed on the basis of length of *allowable service* plus five points for an

excellent efficiency rating (90 or better) based on the latest approved efficiency rating marks at the time the action is initiated. No points will be added to allowable service points for any efficiency mark less than excellent (90).

(2) In the event that two or more employees have the same number of retention credits, ties shall be broken by consideration of factors in the following order:

(a) Entrance on duty date at this yard for the period of current continuous service.

(b) Total Federal Government service.

(c) Official conduct.

(d) Shop Efficiency Rating.

(e) Attendance.

(f) Dependency.

17 (c) Length of service (allowable service) for chief quarterman, special leadingman, leadingman, snapper, and shop personnel supervisors, shall be restricted to the time served in the rating held at the time of demotion *plus* that time that may have been served in higher supervisory ratings in this activity or to continuous allowable service in the ratings concerned where the employee has been transferred from one naval activity to another. Such service shall be computed to the nearest day.

Length of service (allowable service) for planners and estimators, as well as progressmen shall be limited to time served in those ratings in this activity or to continuous allowable service in the ratings concerned where the employee has been transferred from one naval activity to another. Such service shall be computed to the nearest day.

(d) Employees covered by this order shall be demoted in reverse order of retention credits starting with the lowest sub-groups within an affected competitive level. Upon demotion such employees shall (a) fill any established vacancy in the next lower rating or (b) displace an employee in the next lower rating in the same or in a lower retention group and sub-groups than that of the employee to be demoted. The employee displaced shall be the one with the lowest retention credits in the lowest retention group and sub-group involved.

(e) If necessary, employees covered by this order shall be similarly considered for demotion to successively lower ratings. If the employee concerned cannot be demoted without displacing an employee in a higher retention group and sub-group, reduction in force shall be made by trades at the employee's present level. In such case, retention credits shall be computed on the basis of one point for each full year of Federal Service *plus* 5 points for an "Excellent" efficiency rating (90 or above).

(f) Leadingmen should normally be reduced to journeyman ratings except when actual snapper positions exist.

(g) In no case may an employee in retention group B be demoted to a lower rating in which a retention group A employee has been separated or demoted due to reduction in force.

18 (h) *In unusual situations* an employee performing necessary duties which cannot be taken over by any other available employee with higher retention credits, without undue interruption in the work involved, may be retained, al-

though employees with higher preference may be affected. A written statement of the reasons for such exceptions shall be available upon request for inspection by employees adversely affected and for review by the Civil Service Commission.

(i) Employees being demoted shall be extended the option of taking such accumulated annual leave as he desires at the higher rate of pay.

(j) Demotions of masters, foremen, and other supervisory positions whose appointments are made by the Navy Department shall only be made as the result of the Navy Department's action. It is the Department's intention in considering such demotions to apply the policy principles contained herein.

2. Nothing in this order shall be construed to change the procedures in effect for demotion of supervisors for reasons of discipline or inadequate performance.

/s/ JULES JAMES

/s/ F. H. KENAN
Lieut., USNR
Aide to the Commandant,
Distribution "B"
FXD
Members of Shop Committee

Filed Mar 14 1947

Exhibit C.

Quarterman Shipfitter	*Efficiency Credit*	*Total Service Credit*
A-1		
Manuel H. Brown	91	8.53
Thomas R. Doran	94	8.13
A-2		
Thomas Sinclair	93	9.80
David McD. Williamson	91	9.40
Charles F. Garmon	93	9.34
Ernest H. Kornahrens	92	8.88
John Y. Crow	93	8.42
Carl L. Ott	90	8.21
William S. Logan	90	7.75
Walter Fisher	87	4.71
Rock E. Archambault	84	4.43
August H. Almers, Jr.	85	3.96
Angele F. Buere	87	3.08
Haskell H. O'Brien	89	2.67
William E. Brandt	89	2.52
Eugene V. Black	88	2.52
Doctor R. Winter	82	2.46
Thomas R. Brown No. 1	86	2.46
Carleton T. Durant	86	2.25
John F. Reynolds	80	2.19
Leadingman Shipfitter		
A-1		
William D. Monger, Jr.	91	8.83
James E. Dukes	90	8.73
Robert J. Thompson	90	7.96
Coleman B. Rowland	93	7.96
Joseph D. Lanier	91	7.70
Julius W. Roumillat, Jr.	91	7.58
Roy O. Caffey	90	7.25
James L. Gamble	89	3.83
Albert C. Sanburg	88	2.55
Clark A. Putnam	86	2.25
Jimmie D. Box	85	1.79
Edward G. Zwingmann	82	1.52
Roy C. McNeil	84	1.12
Samuel I. Riley	80	.58

Leadingman Shipfitter
A-2

	Biship McK. Bell	94	10.03
	Carlton A. Melvin	91	9.94
	Donald H. Miller	95	9.28
	William B. Rhode	94	9.09
	Edward G. Cooke	91	8.53
	William H. Mitchum	92	8.26
20	Walter A. Stafford, Jr.	93	8.19
	Robert C. Noland, Jr.	93	8.13
	Sidney N. Sellers	94	8.13
	Selvin G. Watson	93	8.08
	Glenn Hearn	93	7.96
	Walter A. Edwards	91	7.70
	Theodore Piaszczyk	83	4.88
	George L. Kornahrens	88	4.00
	Earl W. Hilton	86	3.83
	Clarence B. Skeeter	88	3.53
	Eugene C. Smith	86	3.34
	Reynolds McK. Reeves	85	3.19
	Magnus E. Shier	85	3.08
	Willie W. Holdomb	89	2.96
	Paul O. Priddy	86	2.58
	Eli B. McDaniel	86	2.58
	James L. Jones, No. 1	83	2.56
	Nealy B. Baldwin	84	2.58
	Lloyd S. Johnson	85	2.54
	Harold S. McGuiness	87	2.50
	Cecil O. Driggers	89	2.50
	Paul C. Taylor	87	2.46
	Henry L. Steinmeyer	84	2.25
	Leroy Walker, No. 1	82	1.48
	Daniel L. Carter, No. 1	83	1.48
	Harry C. Metts, No. 1	85	1.48

21 Filed Mar 14 1947

Exhibit D.

LL/P18-1/P16-1/P19(1722)

CHARLESTON NAVAL SHIPYARD
NAVAL BASE, S. C.

Date of Notice *7 October 1946*

From: Commander, Charleston Naval Shipyard
To: Earl W. Hilton, Shipfitter, Ck. No. 11-257.
Subj. Notice of Furlough Because of Reduction in Force.
Refs: (a) NCPI 170 (Rev. I), dtd 1 May 1946.

(b) Navy Dept. Cir. Ltr., OIR:100:crc, CPL&D-46-202 dtd 12 Sep 1946.

(c) Notice of Separation Because of Reduction in Force dtd *10 September 1946*

Encls:

(A) IRD-E-No. 140a

(B) Pamphlet "Information to Employee"

1. The Commander regrets that, due to curtailment of work and/or funds, it will be necessary to eliminate certain positions in your competitive level. Your name has been reached for action. In view of the expressed policy of the Navy Department to retain its long-time, high-grade career employees and in the hope that within one year conditions may justify your recall to duty, it is proposed to place you in a furlough status rather than effect your absolute separation by reduction in force. You are hereby given a 30-day notice that you will be placed on furlough on *8 November 1946* or at the expiration of any annual leave which you may have to your credit, whichever is later. Your active service was terminated on *19 September 1946* in accordance with reference (c). You will be placed on leave with pay if you have annual leave to your credit, otherwise leave without pay, until the effective date of your furlough.

2. In the event you desire to be separated rather than furloughed, you should so advise the Industrial Relations

Officer in writing, using enclosure (A). Upon receipt of your written request, you will be involuntarily separated from the service by reduction in force, instead of being furloughed. In the event enclosure (A), requesting separation by reduction in force, is not received by Industrial Relations Officer on or before *7 November 1946*, it will be assumed that furlough is acceptable to you. *Attention is invited to the fact that if you are placed on furlough, you will be unable to secure a refund of your retirement deductions until such time as your furlough is terminated by an absolute separation.*

3. The reduction in force regulations require that you be given an opportunity for transfer or reassignment within the Navy Department to a position of like seniority, status and pay in the same geographical location under certain conditions. For information concerning a possible transfer or reassignment, you should consult the Placement Unit, Room 201, Industrial Relations Division, Building No. 76 within 10 days of the date of this notice. If it is impossible to place you in a position of like seniority, status and pay, an attempt will be made to place you on a position in a naval activity in this geographical area involving a reasonable change to lower grade, providing such is satisfactory to you.

4. If you are in sub-group A-1 plus with an efficiency of "Good" or better, you will be carried in a furlough status for a period of 1 year from the effective date of furlough unless sooner recalled to duty. At the end of the one year period, you will be separated for reduction in force. If you are in retention sub-group A-1 plus, with an efficiency rating of less than "Good", your furlough will be terminated by separation due to reduction in force on....., the expiration of your statutory retention period, unless sooner recalled to duty.

22 5. If you are in sub-group A-1 or A-2 you will be carried in a furlough status for a period of one year from the effective date of your furlough, unless sooner

recalled to duty. At the end of the one year period you will be separated for reduction in force.

6. The services you have rendered during the wartime emergency are greatly appreciated. Your selection for furlough has been made in accordance with procedures established by the Navy Department and approved by the U. S. Civil Service Commission. Factors taken into account are the nature of your appointment, whether or not you are entitled to veterans' preference, your efficiency rating, and the length of your Federal service, resulting in total retention credit calculated as follows:

Retention Group	*Efficiency Rating*	*Efficiency Credit*	*Allowable Service Credit*	*Total Retention Credit*
A-2	E	5	12.46	17.46

7. If you wish to examine the regulations or to inspect the retention register and records, please consult the Employment Section, Industrial Regulations Division, Room 201, Building No. 76. In the event that you should need any advice or information relative to your rights as an employee of this Shipyard, you are urged to consult your supervisor or any of my representatives.

8. Records indicate that you are (not) entitled to veterans' preference. If you believe that you should be entitled to veterans' preference, please consult the employment Section, Industrial Relations Division, Building No. 76 at once. If you believe that your rights under Civil Service regulations or the Veterans' Preference Act of 1944 have not been recognized in your case, you have the right to appeal this action of the U. S. Civil Service Commission. The Office of the Area Supervisor, Fifth Civil Service Region is located in Room 204, Building No. 76, Naval Base, S. C. This appeal must be made in writing within 10 days of receipt of this notice and should include your specific reasons for appealing.

9. According to our records, you (do not) have reemployment rights in the ..... If you

(Name of Federal Agency)

have these rights, you should apply to that agency immediately, and not later than 40 days after the effective date of your furlough.

10. If you are interested in further Federal employment, the following information is pertinent: On 4 February 1946 by Executive Order No. 9691, the Civil Service Commission was directed to resume the practice of holding examinations leading to permanent appointment in the Federal service. Announcements of examinations leading to permanent appointment will be posted in first and second class post offices and press releases will be distributed to newspapers. You should watch these sources of information for the date on which any examination in which you are interested is announced. Pending establishment of registers from these examinations, Federal agencies have been authorized by the Civil Service Commission to effect reappointments, transfers, promotions and appointments to all classified positions in the Federal service on a temporary basis, where such agencies are authorized to increase personnel. Should you secure reemployment in another Federal agency, application should be made immediately for transfer from this shipyard. (Furlough status)

C. S. SEABRING
By Direction

CC: 1722
173
1721 (File)
Master *Shipfitter*

23 Filed Mar 14 1947

Exhibit E.

Shipfitter A-1 X	*Efficiency Credit*	*Total Service Credit*
Eugene C. Brockenfelt	E	10.23
Thomas E. Clark	E	10.14
Wilson A. Ham	G	7.38
Clinton G. Beach	G	7.09
Daniel L. Jenkins, Jr.	G	7.41

Frank E. Craven	G	6.89
Maurice W. Sullivan	G	6.69
Fred A. Stender	G	6.46
Julian E. Ritter	G	6.05
George F. Gonzales	G	6.05
Charles F. Heape	G	6.26
James W. Ewers	G	6.03
Norman B. Keenan, Jr.	G	6.02
Wilton L. Adams, Jr.	G	6.01
William J. Sheppard	G	5.98
Herbert L. Thorpe	G	5.84
Francis E. Middleton	G	5.71
John H. Martschink, Jr.	G	5.55
Philip Meyer	G	5.53
Farmer G. Cone	G	5.57
James G. Hitopoulos	G	5.49
Roy E. Wagner	G	5.06
Lee R. Watkins	G	5.06
Vernon E. Johnson	G	5.06
Thomas D. Kellahan	G	5.05
William J. Britz	G	5.03
Lyndon N. Mountain	G	5.02
Joseph C. Wall	G	4.98
Austin W. Graham	G	4.90
Luke E. Chewning	G	4.85
James A. Rourk No. 2	R	4.83
Elton C. Hartley, Jr.	G	4.73
Robert E. Werts	G	4.71
Jesse Graham	G	4.71
Leonard L. Farr	G	4.71
Ralph S. Fail	G	4.71
John E. Legette	G	4.70
Oscar C. Melton	G	4.69
Rogers L. Judy	G	4.65
Murphy S. Wessinger	G	4.58
Nowell N. Self	G	4.56
James L. Owen	G	4.59
Lewis A. Cope	G	4.66
Hubert P. Bobo	G	4.48
Raymond N. Riley	G	4.46
Albert N. Watts	G	4.46
Albert E. Rogers	G	4.38
Johnnie Nolin	G	4.37
Samuel G. Tippins	G	4.36

	Herman L. Leonard	G	4.32
	Francis P. Johns	G	4.32
	Marion F. Walton	G	4.31
24	Jennings B. Johnson	G	4.31
	Hampton O. Paul	G	4.30
	John B. Cannon	G	4.29
	Willie T. McCarty	G	4.34
	Paul E. Whipple	G	3.28

A-1 X No Efficiency

Edward L. Knight, Jr.	6
Eugene G. Villeponteaux	7
Wilbun E. Mitchel 3	6
Inman B. Woods	6
David E. Hartzog	6
Cecil B. Williams	5
Willie Caison	6
Henry T. Muller	5
Raymond A. Naylor	5
William J. Voight	8
David L. Hutto	5
Mack R. Hucks	5
Frank C. Roberts, Jr.	5
Raymond H. Hahn	6
Christopher L. Wynham	6
Watson W. Clark	6
Henry Almers	7
James W. Richardson	5
Clinton D. Altman	5
Marion H. Salerni	8
Roy S. Clifton	6
Samuel E. Vereen	5
Solomon E. Collins	5
Daniel H. Pigott, Jr.	6
James E. Cloaninger	5
Thomas B. Young	4
Herman T. Schurlknight	8
James C. Morrison	5
Charles C. Deantonio	6
William L. Sheffield, Jr.	4
Donald P. Kearns	6
Marvin R. Allen	5
Edward W. Gay	6
Efford M. Ivie	5

Ralph H. Harley		7
William C. Mole		7
Ralph L. Sedgwick		6
Norman E. Bailey		6
Robert R. Patz		5
John B. Gaskins		7
Charles P. Sanders, Jr.		6
Roy Seay		5
Thomas A. Jamison, Jr.		6
Clifford W. Bath		5
William J. Thrift, Jr.		8
William J. Thrift, Jr.		8
25 Charles R. Harrah		5
Clifford M. Songer, Jr.		8
Charles J. Finnegan		6
Edward B. Delk		5
Louis E. Douglas		6
Joseph M. Murr		6
Paul E. Pearce		5
Marion L. Hanagriff		6
Drayton H. McClellan		6
James H. Folk		5
Harry C. Stoudenmire		5
Lawrence A. Hartnett		6
Leonard M. Freeman		6
James L. Gibson		5
Warren H. Seyle		6

A-1

Clinton I. Washburn	G	25.13
George Rusler	G	23.91
Herman D. Couch	E	21.08
Hugo W. Metzé	E	19.45
Charles A. Tribble	E	18.58
Glynn W. Potter	E	17.73
Homer P. Stephens	E	17.33
William L. Clapper	E	17.30
James L. Bennett	E	16.07
Gilbert L. Smith	E	14.23
Jessie J. Sammons	G	14.07
William R. Morris	E	13.74
George W. McCullough	E	13.52
Herbert H. Adams No. 1	E	13.79
Rowland P. Norton	E	13.40

	Jesse F. Vaughn	G	13.31
	Tannie W. Jacques	G	12.51
	Wardie J. Turner	E	12.65
	Albert R. Jacobs	E	12.76
	Walter C. Bailey	E	12.87
	Charles G. Thomas	G	12.04
	James W. Walsh, Jr.	E	12.02
	William G. Whaley	E	12.30
	Alvie L. Box	E	12.39
	Thomas E. Bridges	E	11.88
	Marler Crow	E	11.94
	George D. Gettman	G	11.00
	Wade T. Myers	G	10.14
	Elmo Harris	G	9.85
	Frank T. Cawley	G	9.81
	David W. Stone	G	9.87
	Hiram H. Blackburn	G	9.89
	William D. Mitchell	G	9.84
	James O. Ivey	G	9.66
	William J. Hunt	G	9.00
	Robert E. Kennedy	G	9.30
	Walter L. Haile	G	9.22
26	Louis E. Black	E	9.34
	William L. Dawson	G	8.81
	Gervase G. Gaskins	G	8.72
	Edwin W. Rogers	G	8.09
	John H. Davis No. 1	G	8.00
	Henry I. Crumpton	G	7.62
	Jack H. Morris	G	7.81
	Andes M. Chapman	G	7.79
	Julian E. Beattie	G	7.19
	Clayton H. Swink	G	8.95
	Francis C. Blake	G	6.50
	Luther J. Moulds	G	6.88
	William V. Hickman	G	6.05
	Stanton C. Davenport	G	6.28
	William F. Monogan	G	6.15
	John P. Cantweel	G	5.68
	Albert A. Anderson	G	5.88
	Hal C. Nichols	G	5.91
	Roy C. Burnett	G	4.25
	James D. Smith	G	4.13

A-2

	Clarence B. Skeeter	E	26.72
	Eugene C. Smith	E	25.78
	George L. Kornahrens	E	23.61
	James C. Bunch	E	19.39
	Henry L. Steinmeyer	E	19.07
	Earl W. Hilton	E	17.46
	Hugh L. Black	E	17.07
	Leroy C. Axson	E	17.21
	Cleveland J. Smith	G	17.06
	Ernest L. Rogers	E	16.73
	James L. Fox	E	16.28
	Carl J. Westbury	E	16.24
	Paul C. Taylor	E	16.23
	Joseph R. Favian	G	15.66
	Harold S. McGuiness	E	15.81
	John C. Langley	E	15.82
	Harry C. Metts No. 1	E	15.17
	James G. Cummings	E	15.38
	Reynolds McK. Reeves	E	14.59
	Shelby D. Galloway	E	14.62
	James L. Jones No. 1	E	14.71
	Robert G. Hall	E	14.90
	Alexander Elliott	E	14.19
	John Cooke, Jr.	E	14.47
	Walter M. Evans	E	13.72
	John J. Murphy	E	13.33
	Gilbert S. Ott	E	13.33
	James E. Streets, Jr.	E	13.28
	Wilfred H. Miller	E	13.02
27	James C. Whaley	E	13.01
	James E. Herndon	E	13.01
	Raphael P. Pooser	E	13.00
	Albert P. Ham, Jr.	E	13.39
	Bernard A. Holst	E	12.91
	Truman James	E	12.89
	Ualton T. Warren	E	12.87
	Peter P. McTavish	E	12.76
	William A. Wise, Jr.	E	12.74
	Joseph C. Joye	E	12.54
	John B. Priester, Jr.	E	12.75
	Marion D. Cotton	E	12.71
	Charles J. Relyea	E	12.33
	Joseph G. Grace, Jr.	E	12.32

	Edmond J. Pop	E	12.27
	Clarence E. Forbes	E	12.13
	Clarence Tisdale No. 1	E	12.04
	Lucius A. Gardner, Jr.	E	12.02
	Cecil H. Jaques	E	12.24
	Edward H. Tolley	E	12.04
	Theodore J. Limehouse	E	12.01
	Magnus E. Shier	E	12.37
	Ernest G. Pearson	G	11.93
	Charles J. Cox	G	11.58
	Lewis S. Malone	E	11.76
	John H. Beckroge	E	11.73
	Charles B. Peigler	E	11.72
	James T. Fralix	E	11.69
	Emerson H. Orear	E	11.69
	Wallace D. Casteel	E	11.66
	Leroy Walker No. 1	E	11.64
	Reese A. Inabinett	E	11.60
	William E. Taylor, Jr. No. 1	E	11.57
	Ernest R. Swindler	E	11.52
	Albert J. Garner	E	11.51
	Samuel W. Thompson	E	11.52
	Frank H. Thompson No. 1	G	11.39
	Norman B. Altman	G	11.02
	Daniel A. Thomas	E	11.49
	Patrick J. Melia	E	11.44
	Clarence P. Way	E	11.11
	Berry C. Brooms	E	11.05
	Robert E. Oliver, Jr.	E	11.05
	Marion H. Wilder	E	10.50
	Eli B. McDaniel	E	10.92
	Charles H. Missell, Jr.	E	10.90
	Benjamin C. Farmer	E	10.85
	Ralph E. Caddell	E	10.82
	John B. Williams No. 1	G	6.27
	Charles E. Padgett	G	6.27
	Leonard W. Scott	G	5.87
	Joseph F. Duncan	G	5.74
	Major F. Smith	G	5.82
	Austin E. Moody	G	5.74
28	Daniel C. Morris	G	5.55
	James H. Bridgman No. 1	G	5.69
	Ralph Davis	G	5.24
	Isaac L. Gardner	G	5.16
	John E. Barrineau	G	4.29

A Non Vet. No. Efficiency

Doctor R. Winter
Eugene V. Black
Walter A. Stafford, Jr.
Walter B. Britton

A-2 No Efficiency

Black, Eugene V.
Mitchum, William H.
Edwards, Walter A.
Brown, Thomas R.
Cooke, Edward G.
Crow, John Y.
Durant, Carlton T.
Hearn, Glenn
Hiott, Langdon H.
Miller, Donald H.
O'Brien, Haskell
Piaszczyk, Theodore
Pierce, James B.
Reeves, Reynolds McK.
Rhode, Wilbur J.
Rhode, William B.
Watson, Selvin G.
Cleveland, Glenn E.
Williams, John B.

29 Filed Mar 14 1947

Exhibit F.

SECNAV
OIR:100:s11

CPI&D-46-160
F

NAVY DEPARTMENT
WASHINGTON 25, D. C.

27 Jun 1946

CIRCULAR LETTER

To: All Naval and Marine Corps Activities Concerned
Subj: Discussion of Some of the Current and Future Management Problems

1. Enclosed 1 is a discussion of some of the problems facing the Naval Shore Establishment.

2. It is requested that a copy of enclosure 1 be placed in the hands of each supervisor and officer connected with

civilian employment. It is further requested that the commanding officer of each station, in conference with his principal officers and supervisors, discuss and analyze the problems specifically as they apply to the operation of his station.

/s/ John L. Sullivan
JOHN L. SULLIVAN
Acting Secretary of the Navy

Encl: (HW)
1. Discussion of Some of the Current and Future Management Problems of the Naval Shore Establishment

DISTRIBUTION:
OIR Special List No. 25

30 DISCUSSION OF SOME OF THE CURRENT AND FUTURE MANAGEMENT PROBLEMS OF THE NAVAL SHORE ESTABLISHMENT.

RADICAL DIFFERENCES BETWEEN NAVY'S PRE-WAR AND POST-WAR INDUSTRIAL RELATIONS

Today, management philosophy and employment conditions in the Navy are radically different from what they were prior to the outbreak of the war. A few years ago operation was on the basis of the balanced shop, a man's efficiency rating being relative to the efficiency of other men, and layoffs essentially followed the men's relative efficiency. Veteran preference existed, but since the number of veterans in the employ of the Navy was not large, preference rights accorded veterans were not significant factors in management's problems. Prior to the war there was no specific pay increase policy for ungraded employees wither published or understood. Present conditions require changes in the previous concepts of many phases of industrial relations.

The balanced shop, which included in its concept the idea that each pay rate within a trade was a different position, has been eliminated. There has been substituted in its

place a concept that the trade rating is the position and the pay rates are steps of the position. Although this change was made administratively, it was actually the only logical step that could be taken considering the problems created by the reduction in force regulations issued by the Civil Service Commission under the authority of the Veterans' Preference Act. This change resulted in (1) the establishment of a published pay advancement policy that must over a period of time result in practically all employees attaining the maximum rate of pay of their rating, if retained in service after probation, (2) marking the efficiency rating of all persons in a trade in accordance with a standard applicable to the entire trade and with no distinction in the standard as applied between those receiving the minimum rate of pay and those receiving the maximum rate of pay, and (3) the establishment of the trade as the competitive level for a reduction in force rather than having each pay rate constitute a separate competitive level.

A man's efficiency must now be determined on what he himself does on the tasks or jobs assigned him, and not on how much better or worse some other man could do on the same or other jobs.

Veteran employment is rising rapidly, and as a consequence veteran preference is becoming very significant in all phases of management.

Layoffs will in the course of time be primarily determined on the basis of veteran preference and seniority, ignoring status. Status while very significant now, will soon cease to be a major factor as war service employees are laid off or converted to permanent employees. To a very great extent, efficiency ratings, the foundation of a merit system, have been subordinated to veteran preference rights and seniority.

31 MANAGEMENT MUST BRING ITS THINKING UP-TO-DATE

To change the thinking and firmly established habits of thousands of people is a most difficult task. Unless we examine present conditions carefully, we are apt to think in the past and take actions based on the old concepts of a

balanced shop, relative efficiency, and like items. Management must bring its thinking up to the present. Unless management does accept the current policy and operate under it, irreparable injury will result, not only to individual shore establishments, but the Navy as a whole.

Efficiency Ratings Now Based Solely on Individual Work Performance

A most difficult thing to change in men's minds is their concept of efficiency ratings. The directives of the Navy Department have not and possibly could not have been made sufficiently clear to bring about this change as rapidly as desired. In a further endeavor to clarify, this section and the three following contain a somewhat detailed discussion of the subject of efficiency or performance ratings.

Efficiency ratings *now* are based entirely on a man's individual work performance. His performance is to be measure on the tasks, operations, or work assignments that he actually does during the rating period. His rating is *not* to be dependent upon what he *might* have been assigned to do, or on what he *may* be assigned to do in the future, nor is it to be dependent upon what some other man's efficiency is considered to be on that man's task, operation, or work assignment. It is emphasized that a man's rating is individual to himself and is to be determined only on how well he does the actual tasks to which he has been assigned during the rating period for which he is marked.

Since efficiency ratings are no longer based on the efficiency of the employee concerned relative to the efficiency of his fellow workers, it is conceivable that in unusual instances all employees doing the same job could receive efficiency ratings of "Excellent and Outstanding" or all could receive efficiency ratings of "Good", even though it is admitted that the overall performance of each person is not exactly the same.

The difficulties some persons are now having with efficiency ratings arise primarily from a failure to distinguish between the man's actual work performance and his quali-

fications. Some are attempting to determine a man's efficiency on the basis of his qualifications. A man's initial employment is based on qualifications and is determined by the Civil Service Commission. If he is retained in employment after probation, adequate qualifications must be assumed. A determination is made at the time of employment as to how well he may be expected to perform the tasks or operations of his trade that may be assigned him. That determination is based on apprenticeship or its equivalent, his years of work experience, and the type of work experience that he may have had. After permanent appointment, so far as efficiency ratings are concerned,
32 it is no longer a matter of qualifications. An employee's efficiency rating must not be based upon a guess or estimation as to how well he could do certain types of work, if he were so assigned. As stated above, his efficiency rating depends on how well he himself does the work, operations or tasks that are actually assigned him during the rating period.

The above concept does not destroy the usefulness of qualifications. Action taken on the basis of qualifications is a field separate unto itself. That field is commonly known as "placement". The initial employment of each person is determined on the basis of his qualifications. After employment, good management assigns and reassigns him to tasks in line with his qualifications. Good placement puts a boring mill man on boring mill work, puts a lathe man on lathe work, puts a pump man on pump assemblies, etc. Conversely, good placement does not put a radio electrician on house wiring, or a telephone-board electrician on power wiring. Certain employees may be qualified for many types of work within the trade classification. Following placement, a man earns or merits his efficiency rating entirely on how well he does the task assigned him (which assignment is the prerogative of management during the rating period.

Lay Offs no Longer Based Mainly on Relative Efficiency

As stated before, reductions in personnel occasioned by lack of funds or lack of work are now based primarily on

status, veteran preference and seniority. So far as efficiency ratings are concerned, their principal importance in reduction of force is confined to determining the employees who are "good" and those who are "less than good". The theory upon which this action has been taken by the Congress and the Civil Service Commission is that all employees who receive a "Good" efficiency rating are fully satisfactory employees and that between such fully satisfactory employees, veteran preference and length of service should be the important factors.

EFFICIENCY RATING OF "GOOD" CANNOT BE CHANGED TO "REASONABLY SATISFACTORY" IF PREFERENCE IS THE SAME.

It must be realized that a man's efficiency rating is not a changeable thing, provided that he has constant assignment to one type of work and the work result remains the same. Even if work assignment are changed an efficiency rating is not changeable, provided that equivalent work results are obtained. Therefore, it must be accepted that no man who is given an efficiency rating of "Good" or better can later be given a rating of "Unsatisfactory" or Reasonably Satisfactory" when his assignment is unchanged and the man's work performance is as good or better than it ever was. It certainly must not change due to qualifications, whether those qualifications are real or imagined on his or on some other person's part. It is theoretically possible, however, that an employee may be given a rating of "Good" and later be given a lower rating, even though his assignment and work results are unchanged, in a case where management admits that the former rating was in error.

33

The word "theoretical" is used advisedly since although it is easy to raise an employee's mark, it is extremely difficult, from the standpoint of public opinion, to give him a lower mark.

The Navy is now in a period of demobilization and reduction which is imposing both management and industrial relations problems. To a great extent the prestige of the Navy in the eyes of the public will be affected by the manner in which the Navy meets its reduction in force problem.

It is not an easy task at any time to reduce force and discharge large numbers of employees. Complaints of discrimination and injustice are to be expected. The number and intensity of complaints received during mass demobilizations will decrease as the Navy more closely attains its post war level of employment. But the Navy should proceed now in such a manner as to keep complaints to a minimum during this period of confusion and to reach normal times with the best public and industrial relations that it is possible to attain. It is important to remember that while many hear of the few mistakes, few know of the vast majority of cases that are handled correctly. It is also important to remember that, to the public, the Navy is one employer. Actions taken by one station that are not justifiable under present statutes, regulations or good industrial relations will be charged by the public against the Navy as a whole. This may result in remedial action being taken against the Navy which places on its onerous conditions and restraints.

It is unfortunate that the Navy, in this period of industrial readjustment, was required by circumstances to change its shop efficiency rating system from a numerical system to an adjective system. The change was necessary but it should have been made long ago. Since the change has been made, caution must be exercised to assure that the change does not result in injury to individual men. Care must be taken that employees do not have their efficiency marks lowered from "Good" to "Reasonably Satisfactory" solely because of the change of system. This could conceivably occur in some cases. Employees who barely qualified for a mark of "Good" under the old system may, under a strict compliance with the new system, qualify only as "Reasonably Satisfactory" although there has been no change in their work assignment or in their work performance. The Navy Department does not desire such a result to an individual. If the system is unjust to a specfiic individual, management must make individual administrative corrections. An employee whose work performance

has not changed should not be dropped from "Good" to "Reasonably Satisfactory". However, if a man's performance has actually decreased to a point below the standards set for a "Good" efficiency rating, it is proper and necessary that his efficiency mark reflect that fact. But, a word of warning: it is extremely important, especially in this period of reduction in force, that management be clearly able to demonstrate the fact that the work performance has lowered to that extent. Efficiency ratings must not be lowered on generalities or on opinions which cannot be substantiated. Above all, the efficiency rating must be used as a tool to evade requirements of the statutes or regulations.

34 Repeated Rating of "Reasonably Satisfactory" Means Poor Management

It can be argued that no man should be rated "Reasonably Satisfactory" over long periods of time, since this really means that although his performance is not completely "unsatisfactory", it is not "fully satisfactory". This argument may be considered a bit revolutionary. In proving this point, it can be said that a newly employed man who cannot attain a mark of "Good" or better, which is defined as "fully satisfactory", should not be retained in employment beyond his probationary period. This is true, of course, only provided that he has been given fair opportunity to adjust himself and become fully satisfactory under the standards that have been established. Management has a right to establish such standards. In the case of men past their probationary period who have once been classified as "fully satisfactory" and who now fall below that level or work performance, a special problem is presented and special means to reach a solution is required. The reason for reduction in efficiency must be determined. If management is at fault, it must correct the fault. If the man is at fault, assistance must be given him to correct his fault. This may mean training, counselling, change of work assignment, or other methods. If advice and assistance is

extended to the individual and he fails to bring his performance up to the standard, then eventually one of two actions must be taken. His efficiency rating must go even lower to "Unsatisfactory" or, as an alternative, charges based on his specific weakness must be preferred and such charges must lead to eventual separation. The fact must be accepted that every man has a right to a fair opportunity to attain and retain a "Good" rating. It follows that it is management's duty to see that he either meets the established standards or is eliminated.

Efficiency Rating Changes by Reviewing Officials

It has been contended that is is improper for management to change an efficiency rating which has been given by the supervisor who acted as rater. The argument is advanced that since the rater has the responsibility for rating, it is necessary to abide by his decision and that to act otherwise will destroy the morale of the supervisor. This reasoning is not correct. Every day administrative or executive officers have actions for which they are responsible reviewed and in many cases changed or modified by their superiors. Modifications in the actions of subordinates in the matter of efficiency ratings are no different in principle from the modifications often made in design work, planning and estimating, and like cases. Such reversals are not even restricted in practice to intermediate supervisors, nor are they restricted to the commanding officer of a station, the chief of a bureau, or even to the Secretary of the Navy. The capacity of an individual to accept a reversal or modification of his action and then to carry out fully the revised instructions or changed policy is perhaps the fundamental test of loyalty in an organization and definitely indicates that individual's capacity to perform the duties of a supervisor.

35 Veteran Preference and What Navy Must Do About It

At this point, it desired to discuss the preference accorded veterans in original employment and in retention.

It must be accepted that veteran preference is not fully consistent with a strict merit system. A merit system presupposes that the *best* qualified persons will be appointed to and retained in government service. However, it was the opinion of the great majority of the public and of the Congress that the principles of the merit system should be modified in order to give preference to veterans. The theory, of course, is that such preference is the least return which can be given to those who have borne arms in defense of the country, suffered injuries, and by such service have been deprived of opportunities for employment or advancement. Since the President, Congress and the public have clearly indicated this opinion by enactment of law, the Navy Department must willingly and effectively follow the letter and the spirit of this law. Because the Navy is an Armed Service, its responsibility to the veterans is even greater than that of most Government agencies. The Navy's actions will be scrutinized very closely.

The Department's policy on veterans preference, stated in NCPI 245.3 is as follows:

> "a. The policy of the Navy Department is to cooperate willingly and completely in carrying out the letter and the spirit of the statutes and regulations which accord veterans preference. This policy requires that:
>
> (1) The rights and privileges accorded veterans by law and regulations be extended ungrudingly and without discrimination.
>
> (2) Within the limitation of law and regulations and within the dictates of good management, every practical consideration be given to preference eligibles whenever an administrative action of a discretionary nature is to be taken.
>
> (3) Reasonable requests of veterans be granted if administratively feasible.
>
> "b. Ignorance of the law and the policy shall be corrected. It is the responsibility of all heads of activities to assure that administrative actions of their subordi-

nates are not taken in ignorance of the rights of preference eligibles. Personal non-agreement with the law or policy must not influence any official's administrative action."

36 all levels of Navy management must cooperate loyally and effectively to carry out the above policy.

Management must likewise be alert to future complex employment problems involved in the according of veteran preference.

If the theory upon which veteran preference is based is examined, it appears that not too much harm to the principles of sound management has been done. It is becoming more and more a concept of industrial relations that the most for which management can ask is a "satisfactory" employee and that as between satisfactory employees, distinctions as far as retention in employment should not be based upon slight shadings in efficiency ratings. In private industry, to a great extent, lay-offs of "satisfactory" employees are usually based upon length of service. In the Government, veteran preference has been given top priority. The veteran preference law requires that if a veteran is doing a "good" or satisfactory job he should not be laid off while there is work to be done and non-veterans can be laid off.

Certain statistics bearing on veteran employment in the continental naval shore establishments are pertinent. In August 1945, the total Navy continental civilian employment was 655,386. Of that number, 70,387 or 10.7 per cent had veteran preference. As of 30 March 1946, employment had dropped to 491,659. Of this number the employees possessing veteran preference had increased to 165,529 or 33.7 per cent of the total employment. This increase results, of course, both from the employment and retention regulations.

Veterans are given preference in original employment and when reductions in force occur, veterans are again given preference. The Navy is, therefore, increasing the percentage of veterans by new hires and at the same time decreasing the number of non-veteran employees by the opera-

tion of the regulations pertaining to reduction in force. Reduction in force regulations promulgated by the Civil Service Commission under authority of the Veterans' Preference Act of 1944 are based upon the concept that retention in Government service is to be determined by other factors as well as efficiency ratings. These factors are status, veteran preference, and seniority. Under present regulations, status will soon cease to be an important consideration since it will not be very long before all War Service appointees will be replaced. Therefore, in effect the regulations say that, between fully satisfactory employees, veterans will be retained in preference to nonveterans. As between fully satisfactory veterans (or nonveterans as the case may be) management will retain in employment those with the longest Government service. This is the general pattern. Because it was recognized that certain exceptions to this general pattern would have to be made if operation and ability to do required work in some cases was not to be irreparably impaired, it was provided that this pattern could be modified in those cases where it could be substantiated that reasonable grounds existed for an exception. This is called the Prudential Rule, and is fully quoted herewith from NCPI 170: "EXCEPTIONS • • •.—

37 In unusual situations, an employee performing necessary duties which cannot be taken over by another available employee with higher retention preference without undue interruption to the work involved may be retained, even though employees with higher retention preference may be affected. A written statement of the reasons for such exceptions shall be made a matter of record and shall be available upon request for inspection by employees adversely affected and for review by representatives of the Civil Service Commission."

It is as much the responsibility of management to make use of this rule, when needed, as to refrain from its use when not needed. It was not the intent of the Civil Service

Commission nor is it the intent of the Navy Department that there be a blind following of the general pattern in reduction in force when such a course will cause substantial harm to the mission of the Navy. On the other hand, the Prudential Rule should not be used as a means of evading the principles of the reduction in force regulations. Such action will lead only to criticism of the Navy and may lead to an abolition of the Prudential Rule.

Loss of Highly Skilled Employees Through Reduction in Force

It is, of course, inevitable that, under present regulations, many highly skilled employees will be lost. It is true that these same highly skilled employees are to a great extent responsible for the fact that our old line stations have developed, to a high degree, the ability to handle unusual and unique industrial task. The older machinists, electricians and employees possess of skill in other trades could be depended upon to perform the most difficult tasks and to produce articles of highest quality dependable in service. Since a large part of the Navy's industrial operations is of a jobbing nature and of a highly specialized nature, it is indeed fortunate that this skill and ability had been well developed before the war. It is also true that the Navy was able to rapidly establish new stations at the outbreak of war because it had highly skilled personnel to call upon to serve as a nuclear force at each of the new stations. Of course, the skills and ability of individuals are independent of whether they are veterans or non-veterans. While many employees were veterans of World War I, they were, in fact, but a small percentage of the total force when World War II began. Therefore, it is safe to say that, to a large extent, the efficiency of operation of our old line stations depended on the well-developed skills of non-veterans.

The Navy is now faced with the loss of many of these skilled persons. For the most part, veterans of World War II will be the replacements. Some of the veterans will be unskilled and others will be skilled, but in few cases will

they have the necessary well-rounded experience required to meet the many complex industrial problems of jobbing activities. Without question, stations face a period of
38 reduced overall quality and reduced ability to perform complicated and difficult tasks. The *exact degree* of this loss of ability cannot be measured. How long this period of lessened ability will continue is unknown also. It will continue until the veterans now being retained in employment or newly employed absorb the "know-how" and develop the ingenuity and high skill which the old timers had.

This period of lessened efficiency is inevitable unless it can be assumed that Congress will modify the present employment and retention provisions. To assume that such a modification will occur is not realistic. The task, therefore, of naval management is to recognize the situation as it is, and to take action that a stable and improved condition may be established as quickly as possible. It cannot be overemphasized that veteran preference is here to stay.

Navy's Task of Rebuilding a Highly Skilled Work Force

It should be recognized that, by and large, the best of the Nation's manhood entered the armed forces. If this is so, it appears that among the veterans there is a source of labor which, if properly handled, will in the final end result in a stable and highly skilled work force. It is the urgent task of management to accept this type of veteran and, after employment, give him the necessary help, supervision and training to enable him quickly to become a fully qualified and skilled employee. If management meets this responsibility, the result will be to rebuild rapidly the high standard of performance of shore stations.

Under any circumstances this will not be an easy task and will not be accomplished except as a result of hard work carried on by alert management over a period of years. Certainly a major tool that management must use is a comprehensively organized Industrial Relations Division strong in every aspect of employee relations. At least to some extent the Navy is facing a period somewhat parallel

to that which prevailed in 1940. Many new employees will require assistance and specific or special training in their tasks and jobs. The Navy knows by experience that the apprenticeship system for the basic trades will produce skilled and well-rounded employees. Therefore, it follows that in the coming years the Navy must foster and encourage apprenticeship training to the maximum possible extent. It should be realized, however, that apprenticeship training in itself is not the complete answer. Truly effective supervisory, "on-the-job" and other training programs must be planned, organized and directed. The key to the earliest solution of this problem must have as its basic foundation the training of these new employees, the majority of whom will be veterans.

39 ACTION REQUIRED

While it is recognized that the matter of obtaining a complete understanding and acceptance of the above concepts at all levels of management will undoubtedly require time, the Department urges that all possible efforts be exerted immediately toward the attainment of this objective. It is believed that a proper and prompt application of the above general concepts to specific problems as they arise will serve to resolve such problems fairly and conclusively.

40 **Filed Mar 14 1947**

Exhibit G.

PRESS RELEASE

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D. C.

Press Relations Phone RE-5711, Ex. 497, 612, 613, Room 132, Tariff Bldg, Corner 7th and F, NW.

January 17, 1947.

FOR RELEASE
AFTERNOON PAPERS
MONDAY, JANUARY 20, 1947

More than half the civilian men employed by Federal agencies have seen military service, stated the U. S. Civil Service Commission. At the end of November 1946, in the continental United States, there were 781,400 men veterans, or 53 percent of 1,477,400 men employees. These figures contrast sharply with those of a year ago, November, 1945, when men veterans numbered 496,100 and represented 31 percent of men employees.

Thirteen of the 26 agencies with over 1,000 men employees on their staffs in November 1946 reported that 50 percent or more of the men had been in the armed forces. The War Department counted the largest number of men veterans within its ranks (184,400), while the Veterans Administration showed the highest proportion of men veterans among its men employees (86 percent).

As might be expected, proportionately few women Federal civilian employees have seen military service. Women veterans numbered 33,500 in November 1946, or only 7 percent of all the women employed. Of all veterans in Federal service, women veterans represented only 5 percent.

More than two-thirds of the ex-service employees participated in World War II. This group of recent veterans totaled 547,100 in November 1946. This figure represents 4 percent of World War II veterans in the total population,

as reported in November by the Veterans Administration.

The proportion of men veterans of World War II to total employees is higher in Federal employment than in civilian industrial and agricultural employment. The proportion of men with service in World War II amounted in November 1946 to 26 percent of all Federal employees. According to the Bureau of the Census in November, 19 percent, or 10,680,000 of the 57,040,000 persons in total civilian employment were World War II men veterans. In relation to the men employed in Federal service, World War II men veterans accounted for 35 percent, while among men in all kinds of civilian employment recent men veterans represented 26 percent of the total.

Both the number and proportion of veterans in Federal service moved up rapidly after VJ-Day, while total Federal employment declined substantially. Veteras employment increased from 464,300 in August 1945 to a peak fo 836,500 in July 1946, then decreased to 819,900 in November 1946. Meanwhile, total Federal employees in this country declined continuously from 2,851,500 in August 1946 to 2,017,500 in November 1946, a net decrease of 834,000.

The majority of veterans—650,200, or 79 percent in November—are employed in the four largest Federal agencies. Among all agencies, the Veterans Administration reported the highest proportion (60 percent) of former service people.

TABLE 1

FEDERAL CIVILIAN EMPLOYMENT, BY VETERAN STATUS

Continental United States

Date	Total Employment	Veterans		Non-Veterans	
		Number	Percent	Number	Percent
1944: November	2,876,004	416,611	14	2,459,393	86
1945: November	2,456,210	519,246	21	1,936,964	79
December	2,411,015	558,762	23	1,852,253	77
1946: January	2,405,985	619,192	26	1,786,793	74
February	2,402,221	673,230	28	1,728,991	72
March	2,379,384	728,266	31	1,651,118	69
April	2,393,634	783,607	33	1,610,027	67
May	2,399,855	814,716	35	1,585,139	65
June	2,299,007	817,175	36	1,481,832	64
July	2,282,328	836,485	37	1,445,843	63
August	2,232,461	834,854	37	1,397,607	63
September	2,153,785	825,036	38	1,328,749	62
October	2,118,983	825,881	39	1,293,102	61
November	2,017,535	819,896	41	1,197,639	59

TABLE 2

FEDERAL CIVILIAN EMPLOYMENT, BY SEX AND VETERAN STATUS

November 30, 1946

Continental United States and Washington Area

	Total Employment		Men		Women	
	Number	Percent	Number	Percent	Number	Percent
Total, Continental U. S.	2,017,535	100	1,477,392	100	540,143	100
Veterans	819,896	41	781,374	53	38,522	7
Non-Veterans	1,197,639	59	696,018	47	501,621	93
Total, Washington, D.C. Metropolitan Area	224,110	100	117,344	100	106,766	100
Veterans	69,718	31	63,551	54	6,167	6
Non-Veterans	154,392	69	53,793	46	100,599	94

U. S. Civil Service Commission
January 1947

Exhibit H

TOTAL EMPLOYMENT GOES DOWN.... ....VETERAN EMPLOYMENT GOES UP!

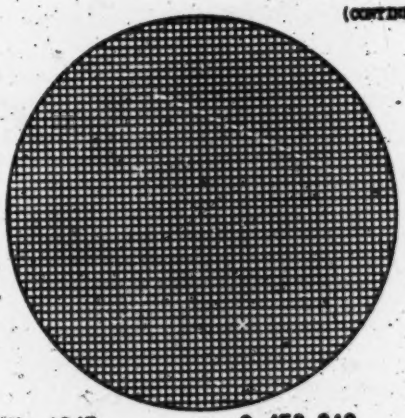
(CIVILIAN EMPLOYMENT, EXECUTIVE BRANCH OF THE FEDERAL GOVERNMENT FOR YEAR ENDED NOV.30,1946)

United States Civil Service Commission

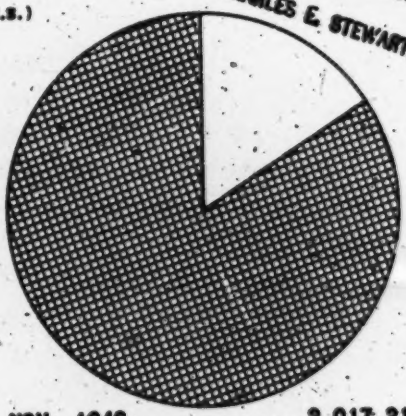
FILED
MAR 14 1947
CHARLES E. STEWART, Clerk

TOTAL EMPLOYMENT

(CONTINENTAL U.S.)

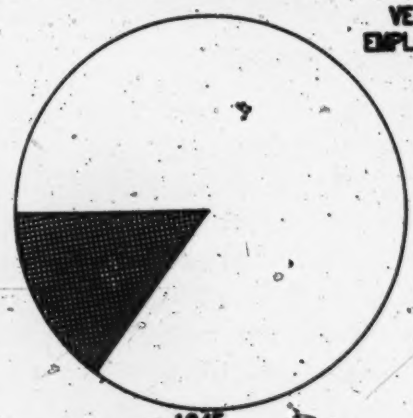


NOV. 1945.....2,456,210

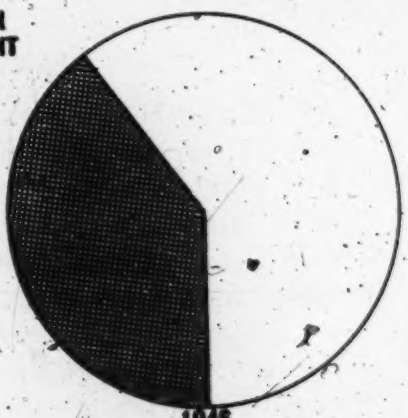


NOV. 1946.....2,017,210

VETERAN EMPLOYMENT



1945
519,246 JOBS OUT OF 2,456,210



1946
819,896 JOBS OUT OF 2,017,210

(5)

45 Filed Mar 31 1947

Defendants' Motion for Summary Judgment

Now come the Defendants, James V. Forrestal, Secretary of the Navy, Harry B. Mitchell, Frances Perkins, and Arthur S. Flemming, Members of the United States Civil Service Commission, by their attorneys, and move the Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law.

JOHN F. SONNETT,
Assistant Attorney General.
GEORGE MORRIS FAY,
United States Attorney,
Attorneys for Defendants.

Of Counsel:
JOSEPH M. FRIEDMAN,
Special Assistant to the Attorney General.
JULIUS FRIEDENSON,
Attorney, U. S. Civil Service Commission.

46 Filed May 6 1947

Informal Memorandum

The court thinks the regulations complained of are consistent with the letter and spirit of the Veterans' Preference Act and are in harmony with the Congressional purpose as indicated by the legislative history of the act. The regulations seem to be born of a governmental policy which has continued from the early days of the Republic. It appears in statutes, regulations and executive orders.

The existing law was designed to codify the policy of the Government with relation to veterans' preference in governmental employment. It was the purpose of Congress to put in one statute all provisions granting military preference in connection with civilian employment by the Government; that there might be statutory authority for the pref-

erence granted veterans in connection with appointment and retention in civilian positions under a reduction in force of governmental employees.

47 It would seem that the interpretation of the Veterans' Preference Act by the Commission is correct and that the regulations which it has promulgated are entirely proper and quite necessary to the administration of the act.

Counsel for defendants will present an order sustaining the motion of defendants for summary judgment and overruling the motion of plaintiff for summary judgment.

F. DICKINSON LETTS,
Justice.

48 Filed May 9 1947

Order

Upon consideration of plaintiff's motion for summary judgment, the affidavit and points and authorities in support thereof, the defendants' motion for summary judgment, and points and authorities in support thereof, heretofore filed herein, upon argument of counsel in open court, and upon all the proceedings herein, and consideration thereof, it is, by the Court this 9th day of May 1947,

ORDERED, ADJUDGED AND DECREED that, in accordance with the ruling made by the Court in this cause on May 6, 1947, as set forth in its informal memorandum of that date, plaintiff's motion for summary judgment be, and the same hereby is, denied, and defendants' motion for summary judgment be, and the same hereby is, granted.

F. DICKINSON LETTS,
Justice.

Approved as to form:
JOSEPH M. FRIEDMAN,
Counsel for Defendants.
MORTIMER KOLLENDER,
Counsel for Plaintiff.

Dated May 9, 1947.

[fol. 53] [File endorsement omitted]

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 9554

EARLE W. HILTON, Appellant,

v.

JAMES V. FORRESTAL, Secretary of the Navy, et al., Appellees

Appeal from the District Court of the United States for the District of Columbia

OPINION—December 29, 1947

Argued November 19, 1947

Mr. Walter B. Wilbur for appellant.

Mr. Joseph M. Friedman, Special Assistant to the Attorney General, with whom Mr. Herbert A. Bergson, Acting Assistant Attorney General, Mr. George Morris Fay, United States Attorney, and Mr. Julius Friedenson, Special Assistant to the Chief Law Officer, Civil Service Commission, were on the brief, for appellees. Mr. Sidney S. Sachs, Assistant United States Attorney, also entered an appearance for appellees.

Mr. Joseph A. Carey filed a brief on behalf of the Veterans of Foreign Wars of the United States as *amicus curiae*, urging affirmance.

Before Groner, C. J., and Edgerton and Prettyman, JJ.

PRETTYMAN, J.:

Appellant brought a civil action in the District Court for a declaratory judgment.[1] He alleged that he is a civil service employee of the United States Government at the Charleston, South Carolina, Navy Yard, with permanent status and with twelve years continuous and satisfactory service; that on November 8, 1946, he was placed in furlough status for one year, pursuant to regulations promul-

[1] 48 Stat. 955 (1934), as amended, 28 U. S. C. A. § 400 (Supp. 1946).

gated by the Civil Service Commission purportedly pursuant to Section 12 of the Veterans' Preference Act of 1944,[2] governing reductions in force among Federal Government personnel. He asserted that the regulations are void as contrary to the statute, and prayed that the court so declare and direct appellee-defendant Secretary to restore him to his office. The District Court gave summary judgment for defendants.

Section 12 of the Veterans' Preference Act provides as follows:

> "In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be [fol. 54] released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further*, That preference employees whose efficiency ratings are 'good' or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below 'good' shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: . . ."

The pertinent regulation issued by the Civil Service Commission is set forth below:[3]

---

[2] 58 Stat. 390, 5 U. S. C. A. § 861 (Supp. 1946).

[3] 5 CFR (1945 Supp.) § 12.303:

"*Retention preference; classification.* For the purpose of determining relative retention preference in reductions in force, employees shall be classified according to tenure of employment in competitive retention groups and subgroups, as follows:

"*Group A*: All employees who have met all requirements for indefinite retention in their present positions. With respect to positions subject to the Civil Service Act and rules, this includes all employees currently serving under absolute or probational civil service appointments or who were appointed, reappointed, transferred or promoted from

Appellant says that the regulations are void because they give absolute preference to veterans with permanent tenure (Class A-1), whereas the statute requires that due effect must also, and equally, be given to length of service and efficiency ratings.

The question before us is whether the regulations are reasonable under the statute. It is true that the Commission has given "due effect" to the four statutory factors by a sort of seriatim application. First there is a classification by tenure; then a sub-classification by veterans' preference; then a sub-classification by efficiency ratings; and within the sub-classifications length of service is applied. [fol. 55] We cannot say that this is an unreasonable method of applying the wholly general directives of the statute. We cannot, therefore, hold the regulations void.

At the same time, we do not think, as appellees argue, that the regulations as drawn represent the only possible method of applying the statute. The proviso in Section 12 is that preference employees shall be retained in preference to all other "competing" employees. We think that that refers to employees competing within the bounds of such classifications as the Commission may establish by

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absolute or probational civil service appointments to war service indefinite or trial period appointments without a break in service of thirty days or more. With respect to positions excepted from the Civil Service Act and rules, this includes all employees currently serving under appointments without time limitation.

"A-1 Plus during one-year period after return to duty, as required by law.

"A-1 With veteran preference unless efficiency rating is less than 'Good'.

"A-2 Without veteran preference unless efficiency rating is less than 'Good'.

"A-3 With veteran preference where efficiency rating is less than 'Good'.

"A-4 Without veteran preference where efficiency rating is less than 'Good'.

"*Group B:* All employees serving under appointments limited to the duration of the present war or for the duration of the war and not to exceed six months thereafter, or otherwise limited in time to a period in excess of one year, except those specifically covered in Groups A and C.

regulations, giving "due effect" to the four factors named. The regulations as drawn refer to "competitive retention groups and subgroups". The Commission could establish classifications, or groups, by a composite consideration of the four factors, and only those employees falling within a particular classification or group would be "competing".

From a practical point of view, we think that Congress meant to give the Commission a wide measure of discretion in the formulation of rules to deal with the difficult administrative problem arising from the reduction of federal employees and the complications of veterans' rights. It did not, we think, mean to foreclose the Commission by unequivocally requiring that veterans, regardless of length of service, be retained over non-veterans, regardless of length of service; or that comparatively inexperienced veterans compose the reduced federal force in preference to experienced non-veteran personnel. But we think that Congress left that difficult solution largely to the Commission, and so long as the Commission stays within the reasonable limits of the "due effect" directive, the courts must leave it there.

Affirmed.

"B-1 With veteran preference unless efficiency rating is less than 'Good.'

"B-2 Without veteran preference unless efficiency rating is less than 'Good'.

"B-3 With veteran preference where efficiency rating is less than 'Good'.

"B-4 Without veteran preference where efficiency rating is less than 'Good'.

"*Group C*. All employees serving under appointments specifically limited to one year or less, all non-citizen employees serving within the continental limits of the United States, all employees continued beyond the automatic retirement age, and all annuitants appointed under section 2(b) of the Civil Service Retirement Act, as amended.

"C-1 With veteran preference unless efficiency rating is less than 'Good'.

"C-2 Without veteran preference unless efficiency rating is less than 'Good'.

"C-3 With veteran preference where efficiency rating is less than 'Good'.

"C-4 Without veteran preference where efficiency rating is less than 'Good'.

[fol.56] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1947

No. 9554

EARLE W. HILTON, Appellant,

vs.

JAMES FORRESTAL, Secretary of the Navy, Et Al., Appellees

Appeal from the District Court of the United States for the District of Columbia

Before Groner, C. J., and Edgerton and Prettyman, JJ.

JUDGMENT—December 29, 1947

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Prettyman.

Dated: December 29, 1947.

[fol. 57] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1948

No. 9554

ORDER OF SUBSTITUTION—January 19, 1948

On consideration of appellant's motion to substitute John L. Sullivan, Secretary of the Navy, as appellee herein in the place of appellee Forrestal on the ground that appellee Forrestal vacated the office of Secretary of the Navy on September 17, 1947, when he took office as Secretary of Defense, and John L. Sullivan took office as Secretary of the Navy September 18, 1947, and it being alleged that there is substantial need for continuing and maintaining this

cause and obtaining adjudication of the questions involved, and it appearing that counsel for appellees and for John L. Sullivan present Secretary of the Navy, consent to the motion to substitute, it is now, therefore,

Ordered by the Court that John L. Sullivan, Secretary of the Navy, be, and he is hereby, substituted as appellee herein in the place of appellee Forrestal.

PER CURIAM.

Dated: January 19, 1948.

[File endorsement omitted.]

[fol. 58] [File endorsement omitted]

[Stamp:] United States Court of Appeals for the District of Columbia—Filed January 9, 1948. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed —— 19, 1948

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix to briefs.
2. Opinion.
3. Judgment.
4. Order for substitution of party.
5. This designation.
6. Clerk's certificate.

Charles Fahy, 1625 K Street, N. W., Washington, D. C., Attorney for Appellant.

Copy of the foregoing received, and service thereof is acknowledged, at the Department of Justice, Washington, D. C., this 9th day of January, 1948.

Philip B. Perlman, Solicitor General, Attorney for Appellees.

[fol. 59] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 59, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for appellant in the case of Earl W. Hilton, Appellant, vs. John L. Sullivan, Secretary of the Navy, et al., Appellees, No. 9554, January Term, 1948, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this nineteenth day of January, A. D. 1948.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia. (Seal.)

[fol. 60] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 560

EARLE W. HILTON, Petitioner,

vs.

JOHN L. SULLIVAN, Secretary of the Navy, FRANCES PERKINS, et al., Members of the Civil Service Commission

ORDER ALLOWING CERTIORARI—Filed March 8, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia, is granted.

And it is further ordered that the duty certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.